


BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

TO: Honorable Chairman and Members of the Board

FROM: Herbert W.A. Thiele, Esq. 
County Attorney

DATE: August 25, 2005

SUBJECT: Effect of *Kelo* on Use of Eminent Domain in Florida for Economic Development

During a previous regular meeting of the Leon County Board of County Commissioners (the "Board"), Chairman Cliff Thael raised the issue of the recently decided United States Supreme Court decision of *Kelo v. City of New London*, 125 S.Ct. 2655 (2005). With no objection from the Board, Chairman Thael requested that the County Attorney provide a legal opinion addressing *Kelo* as it relates to the law currently existing in the State of Florida and Leon County. In addition, Chairman Thael requested that the County Attorney explore options that the Commission could take to assure its constituents and any potential property investors that their property rights would be protected from any adverse effects of *Kelo*.

Summary of Facts and Ruling

The facts and rulings in *Kelo* were summarized recently in the Municipal Litigation Reporter, as follows:

In a 5-4 opinion authored by Justice Stevens, the Supreme Court determined that a city's proposed development plan, designed to revitalize distressed areas, qualifies as a "public purpose," and therefore does not violate the Fifth Amendment's takings clause. Justices Kennedy, Souter, Ginsburg, and Breyer joined with Justice Stevens.

In efforts to rejuvenate its ailing economy, the city of New London, Connecticut, approved a development project to improve its downtown and waterfront areas. The plans include a state park, conference hotel, restaurants, shopping area, a neighborhood, recreational areas, and a museum. The plan also includes a nearby \$300 million research facility that will be built by Pfizer Inc.

The city purchased most of the property for the project from willing sellers. However, when some property owners refused to sell, the city began condemnation proceedings. The owners brought a state court action against the city, alleging that

TO: Honorable Chairman and Members of the Board
Parwez Alam, County Administrator
Tony Park, Director of Public Works

SUBJECT: Effect of *Kelo* on Use of Eminent Domain in Florida for Economic Development
August 25, 2005

Page 2

the takings were in violation of the public use restriction of the Fifth Amendment. The trial court denied relief to some of the property owners, and the Connecticut Supreme Court upheld the proposed takings.

On appeal, the U. S. Supreme Court determined that the takings were constitutional. The city's development project qualifies as a "public use" under the Takings Clause. The takings were not designed to benefit a particular class of individuals, and although the city would not open all of the condemned land for use by the general public, the entire property would be used for a "public purpose."

Rejecting the property owners' assertion that economic development does not qualify as a public use, the Court found that the city's plan was designed to benefit the community. The city implemented the project with the goal of building "momentum for the revitalization of downtown New London."

The city hoped to generate new jobs, increase commerce and tax revenue, and make the city more attractive by creating leisure and recreational activities. They noted that the plan was comprehensive and thoroughly contemplated by the city before its adoption.

The Supreme Court also rejected the owners' proposal that the standard of review for takings of this nature should be elevated to require "reasonable certainty" that the proposed benefits would actually occur. The Court noted that the disadvantages of such a requirement would be especially noticeable in this type of case, as the implementation of the development plan could not begin before the rights of all interested parties was determined.

The Supreme Court deferred to the city's determination that the area was sufficiently distressed to justify the proposed takings, and noted that the city invoked a state statute specifically authorizing the use of eminent domain to promote economic development. The Court held that promoting economic development is a long standing governmental function, and New London's plan "unquestionably" serves a public purpose. Thus, the takings are constitutional under the Fifth Amendment.

Justice O'Connor dissented from the majority opinion, finding that under the new classification of economic development, all private property is vulnerable to being taken by the government and transferred to another private owner who will "upgrade" it. O'Connor reasoned that, unlike prior decisions, the takings in this case do not

TO: Honorable Chairman and Members of the Board
Parwez Alam, County Administrator
Tony Park, Director of Public Works
SUBJECT: Effect of *Kelo* on Use of Eminent Domain in Florida for Economic Development
August 25, 2005
Page 3

serve a public purpose by remedying a harm. The majority's decision to consider the incidental public benefits arising from private owners' subsequent use of property sufficient to render an economic development taking "for public use" effectively erases the public use requirement from the Fifth Amendment entirely, according to the dissent. Chief Justice Rehnquist and Justices Scalia and Thomas joined Justice O'Connor, with Justice Thomas also filing a separate dissent.

Stafford Publications, *Municipal Litigation Reporter: Special Bulletin for Subscribers*, vol. 25, pg. 104 (June 23, 2005)

Analysis Of Kelo

The *Kelo* decision has generated an extraordinary amount of media attention. Despite the overwhelmingly negative public reaction, many analysts agree that, "it is incorrect to suggest that *Kelo* broke new ground and expanded the government's power of eminent domain." *Georgetown Environmental Law & Policy Institute: The Myth That Kelo Has Expanded the Scope of Eminent Domain*, John D. Echeverria (July 18, 2005). The decision does nothing radically different from the approach the Court had already been taking in its eminent domain cases since the 1960's. In our opinion, *Kelo* did not grant to the government any substantially new powers, but rather added to a list of strict criteria to be met before a government is entitled to use its eminent domain power for economic development.

The unprecedented media reaction to *Kelo* appears to be focused only on the concise ruling by the Court that economic development constitutes a public purpose. Though never actually stating this position so succinctly before, the Court has consistently supported a state's use of eminent domain to promote economic development. For example, in order to alleviate the oligopoly of land ownership in Hawaii, the Court three decades ago had approved the use of eminent domain to force the sale of homes from the owners to the renters that occupied them. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984).

While *Kelo* maintains the Court's policy of deference to a legislative determination of public purpose, it appears to establish a higher level of scrutiny. The Court repeatedly stressed the necessity of a carefully considered development plan subject to thorough deliberation before the validity of the public purpose will be upheld. In fact, the Court in its written opinion referred to New London's development plan. Timothy J. Dowling, *Outline of Remarks on Kelo v. City of New London: The Ruling, the Reaction, and What Lies Ahead* (IMLA Telephone Conference Support Material: *Kelo* and Castle Rock, July 20, 2005). The Court's continual reference to New London's development plan, and its depth of analysis and public input, demonstrate the importance of meeting this

TO: Honorable Chairman and Members of the Board
Parwez Alam, County Administrator
Tony Park, Director of Public Works

SUBJECT: Effect of *Kelo* on Use of Eminent Domain in Florida for Economic Development

August 25, 2005

Page 4

prerequisite in order for a government's legislative finding of public purpose to be upheld. Although *Kelo* seemingly expands the eminent domain power by declaring economic development as a public purpose, it effectively limited such power by placing such legislative determinations under more scrutiny than ever before.

Analysis of *Kelo's* Effect in Florida

The State of Florida is given its power of eminent domain through Amendment XIV of the United States Constitution. It is a general grant of power with few restrictions. The Florida Legislature has chosen to pass this power to the various government entities separately and differently, specifically distinguishing between state agencies, counties, municipalities, school boards, etc. A municipality's eminent domain power, as provided in Fla. Stat. §§166.401, 411 is limited to only those uses as expressed in the statutes, none of which involves economic development. Florida counties, however, are granted a much broader eminent domain power in Fla. Stat. §127.01, which allows the use of eminent domain for, "*any county purpose*." (emphasis added) In addition, the Florida legislature has provided additional eminent domain authority to counties and municipalities through the *Community Redevelopment Act*, Fla. Stat. §167.330 (the "CRA").

The CRA, unlike the state law utilized by New London in *Kelo*, requires a county or municipality to make a legislative determination, supported by data and analysis, that the conditions in the redevelopment area meet the criteria for a slum or blighted area, as defined in the statute. This prerequisite provides a greater degree of protection to Florida property owners than that afforded to the New London property owners in *Kelo*. Under the Connecticut statute, New London was able to utilize its eminent domain power for the redevelopment without any finding of slum or blight, simply making a legislative finding that economic development was a valid public purpose.

In Florida, a municipality is prohibited from using its eminent domain power for redevelopment other than through the CRA with its requirement for a legislative finding of slum or blight. A county, however, could conceivably bypass the CRA and use its general eminent domain power solely for economic development. Thus, under *Kelo*, a county could arguably complete a carefully considered development plan which establishes economic development as a valid county purpose, as New London did, and use its general eminent domain power to acquire the properties needed for that purpose. Although it is arguably possible under *Kelo*, the use of eminent domain by a county for the sole purpose of economic development is unprecedented and would certainly be highly scrutinized by the courts under the *Kelo* analysis.

TO: Honorable Chairman and Members of the Board
Parwez Alam, County Administrator
Tony Park, Director of Public Works

SUBJECT: Effect of *Kelo* on Use of Eminent Domain in Florida for Economic Development
August 25, 2005

Page 5

The Board has several options available to assure its constituents and any potential property investors that their property rights would be protected from any adverse effects of *Kelo*:

- Adopt a resolution of support for the various legislative bills making their way through the United States Congress. House Bills H.R. 3405 and 3135 are attached along with Senate Bill 1313. These Bills propose new legislation which essentially reverses the *Kelo* ruling by eliminating economic development as a valid public purpose for use of eminent domain power;
- Adopt a resolution declaring that the Board will not authorize the use of its eminent domain power when the sole county purpose is for economic development. This would give the public the assurance that the Board would limit its use of eminent domain for redevelopment to only those instances as authorized under the CRA;
- Adopt an ordinance prohibiting the use of the County's eminent domain when the sole county purpose is for economic development. Our office cautions against this option, as it may jeopardize the County's use of eminent domain power under a CRA.

If any Commissioner would like further information on this issue, please advise the County Attorney's Office.

cc: Parwez Alam, County Administrator
Tony Park, Director of Public Works
Vincent Long, Assistant County Administrator
Alan Rosenzweig, Director of Office of Management & Budget

THIS SEARCH	THIS DOCUMENT	GO TO
Next Hit	Forward	New Bills Search
Prev Hit	Back	HomePage
Hit List	Best Sections	Help
	Contents Display	

Bill 1 of 50

GPO's PDF Display	Congressional Record References	Bill Summary & Status	Printer Friendly Display - 12,388 bytes.[Help]	XML Display [Help]
-------------------	---------------------------------	-----------------------	--	--------------------

STOPP Act of 2005 (Introduced in House)

HR 3405 IH

109th CONGRESS

1st Session

H. R. 3405

To prohibit the provision of Federal economic development assistance for any State or locality that uses the power of eminent domain power to obtain property for private commercial development or that fails to pay relocation costs to persons displaced by use of the power of eminent domain for economic development purposes.

IN THE HOUSE OF REPRESENTATIVES**July 22, 2005**

Mr. BONILLA (for himself, Ms. HERSETH, Mr. GOODLATTE, Ms. WATERS, Mr. POMBO, Mr. SMITH of Texas, Mr. DEFAZIO, Mr. OTTER, Mrs. DRAKE, Mr. BOYD, Mr. CALVERT, Mr. PEARCE, Mr. KUCINICH, Mr. DUNCAN, Mr. THORNBERRY, Mr. NEUGEBAUER, and Mr. MCKEON) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committees on Transportation and Infrastructure, Financial Services, Resources, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit the provision of Federal economic development assistance for any State or locality that uses the power of eminent domain power to obtain property for private commercial development or that fails to pay relocation costs to persons displaced by use of the power of eminent domain for economic development purposes.

21

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Strengthening the Ownership of Private Property Act of 2005' or the 'STOPP Act of 2005'.

SEC. 2. CONDITIONS OF FINANCIAL ASSISTANCE UNDER FEDERAL ECONOMIC DEVELOPMENT PROGRAMS.

(a) Prohibition of Assistance- If, after the date of the enactment of this Act, any State (or any agency thereof) or any unit of general local government (or any agency thereof) engages in any act described in subsection (b), Federal financial assistance under any Federal economic development program may not be provided to such State (including any agency thereof) or unit of general local government (including any agency thereof), respectively, at any time after such act.

(b) Limitations on Use of Eminent Domain- The acts described in this subsection are as follows:

(1) USE OF EMINENT DOMAIN FOR PRIVATE COMMERCIAL DEVELOPMENT-

Any use of the power of eminent domain to take property from one private individual or entity for any economic development purpose and transfer ownership of such property (or a portion thereof) to another private individual or entity.

(2) FAILURE TO PROVIDE RELOCATION ASSISTANCE FOR PERSONS DISPLACED BY USE OF EMINENT DOMAIN FOR ECONOMIC DEVELOPMENT-

Failing to provide, to any person displaced by the use of the power of eminent domain for any economic development purpose, relocation assistance under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (42 U.S.C. 4601 et seq.) in the same manner and to the same extent as relocation assistance is required under such Act to be provided by a Federal agency that undertakes a program or project that results in displacement of such person.

(c) Certification of Compliance- If the head of a Federal agency does not have actual knowledge that a particular State or unit of general government has engaged in an act described subsection (b) after the date of the enactment of this Act, a certification made to such Federal agency head by the chief executive officer of the State or unit of general government that such State or unit has not engaged in any such act shall be sufficient for such Federal agency head to determine that the State or unit is not ineligible, by reason of subsection (a), for Federal financial assistance under a Federal economic development program administered by such Federal agency head.

SEC. 3. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) FEDERAL ECONOMIC DEVELOPMENT PROGRAM- The term 'Federal economic development program' means any of the following programs:

(A) DEPARTMENT OF AGRICULTURE-

24

(i) FOREST SERVICE-

(I) The National Forest-dependent rural communities program for assistance for economic recovery under the National Forest-Dependent Rural Communities Economic Diversification Act of 1990 (7 U.S.C. 6611 et seq.).

(II) The rural development through forestry program pursuant to the Department of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106-291; 114 Stat. 972) and the Department of the Interior and Related Agencies Appropriations Act, 2005 (Public Law 108-447, Division E; 118 Stat. 3080).

(ii) RURAL BUSINESS--COOPERATIVE SERVICE-

(I) The intermediary relending program under section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(II) The rural business opportunities grant program under section 306(a)(11) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(11)).

(III) The program for assistance to cooperatives for economic development under the Act of July 2, 1926 (7 U.S.C. 451 et seq.) and subtitle A of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

(IV) The rural business enterprise grants program under section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932 (c)).

(V) The rural economic development loans and grants program under title III of the Rural Electrification Act of 1936 (7 U.S.C. 930 et seq.).

(iii) RURAL UTILITIES SERVICE-

(I) The program for grants, direct loans, and guaranteed loans for water and waste disposal systems for rural communities under paragraphs (1) and (2) of section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)).

(II) The Rural Utilities Service program for grants and loans to the Denali Commission under section 19(a)(2) of the Rural Electrification Act of 1936 (7 U.S.C. 918a(a)(2)).

(iv) RURAL HOUSING SERVICE-

(I) The rural community development initiative pursuant to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114

24

Stat. 1549A-17) and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2826).

(II) The program for loans and grants for essential community facilities under section 306(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1)).

(v) FARM SERVICE AGENCY- The program for loans to Indian tribes and tribal corporations under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

(vi) RURAL BUSINESS INVESTMENT PROGRAM- The rural business investment program under subtitle H of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009cc et seq.).

(B) DEPARTMENT OF COMMERCE--ECONOMIC DEVELOPMENT ADMINISTRATION- Any program for financial assistance under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq.).

(C) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-

(i) The community development block grant programs under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), including the entitlement grants, small cities, special purpose and insular areas grants, States, Indian tribe grants, and loan guarantee programs.

(ii) The brownfields economic development initiative under section 108(q) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(q)).

(iii) The rural housing and economic development program of the Department of Housing and Urban Development pursuant to title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 3300) and title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105-276; 112 Stat. 2475).

(iv) The Indian housing block grant program under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.).

(D) EMPOWERMENT ZONES PROGRAM- The empowerment zones, enterprise communities, and rural development investment areas programs under subchapter U of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 1391 et seq.).

(E) DEPARTMENT OF THE INTERIOR-- BUREAU OF INDIAN AFFAIRS- The programs for grants, loans, and loan guarantys for Indian economic development of the Office of Economic Development, Bureau of Indian Affairs of the Department of the Interior.

(F) DEPARTMENT OF THE TREASURY- The community development financial institutions fund program under subtitle A of title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.).

(G) APPALACHIAN REGIONAL COMMISSION- Any program for assistance for Appalachian regional development under subtitle IV of title 40, United States Code.

(H) NATIONAL CREDIT UNION ADMINISTRATION- The community development revolving loan fund program for credit unions under the Community Development Credit Union Revolving Loan Fund Transfer Act (42 U.S.C. 9822 note).

(I) DENALI COMMISSION- The Denali Commission program under the Denali Commission Act of 1998 (42 U.S.C. 2131 et seq.).

(J) DELTA REGIONAL AUTHORITY- The program for Delta regional development under subtitle F of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa et seq.).

(K) DEPARTMENT OF HEALTH AND HUMAN SERVICES- The discretionary award program for community economic development under section 680 of the Community Services Block Grant Act (42 U.S.C. 9921).

(2) FEDERAL FINANCIAL ASSISTANCE- The term 'Federal financial assistance' has the meaning given such term in section 101 of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (42 U.S.C. 4601).

(3) STATE- The term 'State' means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(4) UNIT OF LOCAL GOVERNMENT- The term 'unit of local government' means any city, county, town, township, parish, village, or other general purpose political subdivision of a State or any community redevelopment agency, housing authority, special district, or other special purpose political subdivision of a State.

SEC. 4. APPLICABILITY.

at any time after the date of the enactment of this Act, has engaged in either of the following acts

THIS SEARCH	THIS DOCUMENT	GO TO
Next Hit	Forward	New Bills Search
Prev Hit	Back	HomePage
Hit List	Best Sections	Help
	Contents Display	

24

THIS SEARCH	THIS DOCUMENT	GO TO
Next Hit	Forward	New Bills Search
Prev Hit	Back	HomePage
Hit List	Best Sections	Help
	Contents Display	

Bill 1 of 4

GPO's PDF Display	Congressional Record References	Bill Summary & Status	<i>Printer Friendly Display</i> - 3,914 bytes.[Help]	XML Display [Help]
-------------------	---------------------------------	-----------------------	--	--------------------

Private Property Rights Protection Act of 2005 (Introduced in House)

HR 3135 IH

109th CONGRESS

1st Session

H. R. 3135

To protect private property rights.

IN THE HOUSE OF REPRESENTATIVES**June 30, 2005**

Mr. SENSENBRENNER (for himself, Mr. CONYERS, Mr. DELAY, Mr. BLUNT, Ms. WATERS, Mr. COBLE, Mr. SMITH of Texas, Mr. GALLEGLY, Mr. GOODLATTE, Mr. CHABOT, Mr. DANIEL E. LUNGREN of California, Mr. JENKINS, Mr. CANNON, Mr. BACHUS, Mr. HOSTETTLER, Mr. FLAKE, Mr. PENCE, Mr. FORBES, Mr. KING of Iowa, Mr. FEENEY, Mr. ISSA, Mr. FRANKS of Arizona, Mr. GOHMERT, Mr. ADERHOLT, Mr. ALEXANDER, Mrs. BIGGERT, Mr. BOEHNER, Mr. BONILLA, Mrs. BONO, Mr. BRADLEY of New Hampshire, Mr. BUYER, Mr. DAVIS of Tennessee, Mr. DEFAZIO, Mr. DOOLITTLE, Mrs. DRAKE, Mrs. EMERSON, Mr. FOSSELLA, Ms. FOXX, Mr. GIBBONS, Mr. GRAVES, Ms. HARRIS, Mr. HAYWORTH, Mr. HERGER, Ms. HERSETH, Mrs. JOHNSON of Connecticut, Mr. JONES of North Carolina, Mr. KIRK, Mr. KLINE, Mr. MACK, Mr. MCCAUL of Texas, Mr. MCCOTTER, Miss MCMORRIS, Mrs. MYRICK, Mr. NEUGEBAUER, Mr. NORWOOD, Mr. OTTER, Mr. PETERSON of Pennsylvania, Mr. POMBO, Mr. RAMSTAD, Mr. RYUN of Kansas, Mr. SIMPSON, Mr. TAYLOR of North Carolina, Mr. TIAHRT, Mr. WALDEN of Oregon, Mr. CRENSHAW, Mr. BURGESS, Mr. BONNER, Mr. POE, Mr. HEFLEY, Mr. KENNEDY of Minnesota, Mr. RADANOVICH, Mrs. MILLER of Michigan, Mr. SHIMKUS, Mr. FILNER, Mr. GINGREY, Mr. DUNCAN, Mr. REICHERT, Ms. JACKSON-LEE of Texas, Mr. BROWN of South Carolina, Mr. WESTMORELAND, Mr. SODREL, Ms. GINNY BROWN-WAITE of Florida, Mr. GILLMOR, Mr. CUNNINGHAM, Mr. WILSON of South Carolina, Mr. MILLER of Florida, Mr. OSBORNE, Mr. PEARCE, Mrs. JO ANN DAVIS of Virginia, Mrs. BLACKBURN, and Mr. PRICE of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

24

A BILL

To protect private property rights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Private Property Rights Protection Act of 2005'.

SEC. 2. PROHIBITION ON EMINENT DOMAIN ABUSE BY STATES.

(a) In General- No State or any political subdivision of a State shall use economic development as a reason for exercising its power of eminent domain if Federal funds would contribute in any way to--

(1) the project for which the State's or political subdivision's power of eminent domain is exercised; or

(2) the exercise and enforcement of the eminent domain power over that project.

(b) Ineligibility for Federal Funds- A violation of subsection (a) renders such State or political subdivision ineligible for any Federal funds described in that subsection and any Federal agency charged with distributing those funds shall withhold them.

SEC. 3. PROHIBITION ON EMINENT DOMAIN ABUSE BY THE FEDERAL GOVERNMENT.

The Federal Government or any authority of the Federal Government shall not use economic development as a reason for exercising its power of eminent domain.

SEC. 4. DEFINITIONS.

In this Act the following definitions apply:

(1) ECONOMIC DEVELOPMENT- The term 'economic development' means any activity, including increasing tax revenue, other than making private property available in substantial part for use by the general public or by an entity that makes the property available for use by the general public, or as a public facility, or to remove harmful effects.

(2) STATE- The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

THIS SEARCH	THIS DOCUMENT	GO TO
Next Hit	Forward	New Bills Search
Prev Hit	Back	HomePage
Hit List	Best Sections	Help
	Contents Display	

Bill 1 of 50

GPO's PDF Display	Congressional Record References	Bill Summary & Status	Printer Friendly Display - 5,552 bytes. [Help]
-----------------------------------	---	---	--

Protection of Homes, Small Businesses, and Private Property Act of 2005 (Introduced in Senate)

S 1313 IS

109th CONGRESS

1st Session

S . 1313

To protect homes, small businesses, and other private property rights, by limiting the power of eminent domain.

IN THE SENATE OF THE UNITED STATES

June 27, 2005

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect homes, small businesses, and other private property rights, by limiting the power of eminent domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Protection of Homes, Small Businesses, and Private Property Act of 2005'.

SEC. 2. FINDINGS.

24

Congress finds the following:

- (1) The protection of homes, small businesses, and other private property rights against government seizures and other unreasonable government interference is a fundamental principle and core commitment of our Nation's Founders.
- (2) As Thomas Jefferson wrote on April 6, 1816, the protection of such rights is 'the first principle of association, the guarantee to every one of a free exercise of his industry, and the fruits acquired by it'.
- (3) The Fifth Amendment of the United States Constitution specifically provides that 'private property' shall not 'be taken for public use without just compensation'.
- (4) The Fifth Amendment thus provides an essential guarantee of liberty against the abuse of the power of eminent domain, by permitting government to seize private property only 'for public use'.
- (5) On June 23, 2005, the United States Supreme Court issued its decision in *Kelo v. City of New London*, No. 04-108.
- (6) As the Court acknowledged, 'it has long been accepted that the sovereign may not take the property of A for the sole purpose of transferring it to another private party B', and that under the Fifth Amendment, the power of eminent domain may be used only 'for public use'.
- (7) The Court nevertheless held, by a 5-4 vote, that government may seize the home, small business, or other private property of one owner, and transfer that same property to another private owner, simply by concluding that such a transfer would benefit the community through increased economic development.
- (8) The Court's decision in *Kelo* is alarming because, as Justice O'Connor accurately noted in her dissenting opinion, joined by the Chief Justice and Justices Scalia and Thomas, the Court has 'effectively . . . delete[d] the words 'for public use' from the Takings Clause of the Fifth Amendment' and thereby 'refus[ed] to enforce properly the Federal Constitution'.
- (9) Under the Court's decision in *Kelo*, Justice O'Connor warns, '[t]he specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory'.
- (10) Justice O'Connor further warns that, under the Court's decision in *Kelo*, '[a]ny property may now be taken for the benefit of another private party', and 'the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result'.
- (11) As an amicus brief filed by the National Association for the Advancement of Colored People, AARP, and other organizations noted, '[a]bsent a true public use requirement the takings power will be employed more frequently. The takings that result will

24

disproportionately affect and harm the economically disadvantaged and, in particular, racial and ethnic minorities and the elderly'.

(12) It is appropriate for Congress to take action, consistent with its limited powers under the Constitution, to restore the vital protections of the Fifth Amendment and to protect homes, small businesses, and other private property rights against unreasonable government use of the power of eminent domain.

(13) It would also be appropriate for States to take action to voluntarily limit their own power of eminent domain. As the Court in Kelo noted, 'nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power'.

SEC. 3. PROTECTION OF HOMES, SMALL BUSINESSES, AND OTHER PRIVATE PROPERTY RIGHTS.

(a) In General- The power of eminent domain shall be available only for public use.

(b) Public Use- In this Act, the term 'public use' shall not be construed to include economic development.

(c) Application- This Act shall apply to--

(1) all exercises of eminent domain power by the Federal Government; and

(2) all exercises of eminent domain power by State and local government through the use of Federal funds.

THIS SEARCH	THIS DOCUMENT	GO TO
Next Hit	Forward	New Bills Search
Prev Hit	Back	HomePage
Hit List	Best Sections	Help
	Contents Display	